

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CITY OF KAPLAN
AI # 19525

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.

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*
* Enforcement Tracking Nos.
* WE-CN-03-0050
* WE-CN-03-0050A
* WE-CN-00-0324
* WE-CN-02-0254
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SETTLEMENT

The following Settlement is hereby agreed to between the City of Kaplan ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I

Respondent is a governmental agency who operates a wastewater treatment facility at East Amy Street in Kaplan, Vermilion Parish, Louisiana ("the Facility").

II

On May 1, 2003, the Department issued a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Number WE-CN-03-0050 to Respondent, and on November 25, 2003, the Department issued an Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Number WE-CN-03-0050A to Respondent, which were based upon the following findings of fact:

- A. The Respondent owns and/or operates a wastewater treatment facility that serves the City of Kaplan and which is located on East Amy Street in Kaplan, Vermilion Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0044661 effective February 1, 1999, and which will expire January 31, 2004. The Respondent is authorized to discharge treated sanitary wastewater to Sledge Canal, thence into the Intracoastal Waterway, both waters of the state.
- B. The Respondent was issued Consolidated Compliance Order and Notice of Potential Penalty WE-CN-00-0324 on or about December 29, 2000, for monitoring, record, and reporting deficiencies, improper operation and maintenance, and effluent violations for the periods of February 1998 through April 2000. The Respondent submitted a response to Consolidated Compliance Order and Notice of Potential Penalty WE-CN-00-0324 on or about February 5, 2001, describing the cited violations and corrective actions taken by the Respondent. Consolidated Compliance Order and Notice of Potential Penalty WE-CN-00-0324 is a final action and not subject to further review.
- C. The Respondent was issued Consolidated Compliance Order and Notice of Potential Penalty WE-CN-02-0254 on or about May 22, 2002, for effluent excursions. The Respondent submitted a response to Consolidated Compliance Order and Notice of Potential Penalty WE-CN-02-0254 on or about June 3, 2002, describing the cited violations and corrective actions taken by the Respondent. Consolidated Compliance Order and Notice of Potential Penalty WE-CN-02-0254 is a final action and not subject to further review.

D. A file review conducted by the Department on or about November 6, 2003, revealed the following effluent violations as reported by the Respondent on Discharge Monitoring Reports (DMRs):

Date	Outfall	Parameter	Permit Value	Sample Value
June 2002	001	BOD ₅ Monthly Average	10 mg/L	15 mg/L
June 2002	001	BOD ₅ Weekly Average	15 mg/L	24 mg/L
July 2002	001	BOD ₅ Weekly Average	15 mg/L	18 mg/L
October 2002	001	BOD ₅ Monthly Average	89 lbs/day	103 lbs/day
October 2002	001	TSS Monthly Average	134 lbs/day	201 lbs/day
November 2002	001	BOD ₅ Monthly Average	89 lbs/day	93 lbs/day
November 2002	001	BOD ₅ Weekly Average	15 mg/L	36 mg/L
November 2002	001	TSS Weekly Average	23 mg/L	36 mg/L
December 2002	001	BOD ₅ Monthly Average	89 lbs/day	209 mg/L
December 2002	001	BOD ₅ Monthly Average	10 mg/L	26 mg/L
December 2002	001	BOD ₅ Weekly Average	15 mg/L	33 mg/L
December 2002	001	TSS Monthly Average	134 lbs/day	213 lbs/day
December 2002	001	TSS Monthly Average	15 mg/L	27 mg/L
December 2002	001	TSS Weekly Average	23 mg/L	38 mg/L
January 2003	001	BOD ₅ Monthly Average	89 lbs/day	181 lbs/day
January 2003	001	BOD ₅ Monthly Average	10 mg/L	29 mg/L
January 2003	001	BOD ₅ Weekly Average	15 mg/L	47 mg/L
January 2003	001	TSS Monthly Average	134 lbs/day	155 lbs/day
January 2003	001	TSS Monthly Average	15 mg/L	25 mg/L
January 2003	001	TSS Weekly Average	23 mg/L	46 mg/L
February 2003	001	BOD ₅ Monthly Average	89 lbs/day	156 lbs/day
February 2003	001	BOD ₅ Monthly Average	10 mg/L	16 mg/L
February 2003	001	BOD ₅ Weekly Average	15 mg/L	28 mg/L
February 2003	001	TSS Weekly Average	23 mg/L	24 mg/L
March 2003	001	BOD ₅ Monthly Average	89 lbs/day	94 lbs/day
March 2003	001	BOD ₅ Monthly Average	10 mg/L	13 mg/L
March 2003	001	BOD ₅ Weekly Average	15 mg/L	21 mg/L
March 2003	001	TSS Weekly Average	23 mg/L	26 mg/L
April 2003	001	BOD ₅ Weekly Average	15 mg/L	34 mg/L
May 2003	001	BOD ₅ Monthly Average	89 lbs/day	102 lbs/day
May 2003	001	BOD ₅ Monthly Average	10 mg/L	20 mg/L
May 2003	001	BOD ₅ Weekly Average	15 mg/L	32 mg/L
May 2003	001	TSS Weekly Average	23 mg/L	26 mg/L

Date	Outfall	Parameter	Permit Value	Sample Value
June 2003	001	Fecal Coliform Weekly Average	400 col/100 ml	>1,000 col/100 ml
July 2003	001	BOD Monthly Average	10 mg/L	19 mg/L
July 2003	001	BOD Weekly Average	15 mg/L	26 mg/L
August 2003	001	BOD Monthly Average	89 lbs/day	92 lbs/day
August 2003	001	BOD Monthly Average	10 mg/L	14 mg/L
August 2003	001	BOD Weekly Average	15 mg/L	22 mg/L
September 2003	001	BOD Monthly Average	10 mg/L	13 mg/L
September 2003	001	BOD Weekly Average	15 mg/L	23 mg/L
September 2003	001	Fecal Coliform Weekly Average	400 col/100 ml	>1,000 col/100 ml
February – July 2003	001	Biomonitoring – <u>Pimephales promelas</u>	Pass	Fail
July 2003	001	Biomonitoring – <u>Pimephales promelas</u>	Pass	Fail

Each excursion of the permit constitutes a violation of Consolidated Compliance Order and Notice of Potential Penalty WE-CN-00-0324, Consolidated Compliance Order and Notice of Potential Penalty WE-CN-02-0254, LPDES permit LA0044661 (Part I, Page 4, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A. Each excursion after May 1, 2003, is also in violation of Consolidated Compliance Order and Notice of Potential Penalty WE-CN-03-0050.

- E. An inspection conducted by the Department on or about December 18, 2002, revealed that the flow measurement for the meter for the west chlorine contact chamber did not meet the requirement and intent of the permit. Specifically, the flow calculation revealed a 19% error and flow during rain events exceeds the chart range. The permit requires a maximum deviation of less than 10% from the true discharge rate. The failure to calibrate and maintain a flow

measuring device capable of ensuring accuracy of measurements is in violation of Consolidated Compliance Order and Notice of Potential Penalty WE-CN-00-0324, Consolidated Compliance Order and Notice of Potential Penalty WE-CN-02-0254, LPDES permit LA0044661 (Part III, Section A.2, C.5.b, and C.6), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.J.1.

- F. An inspection conducted by the Department on or about December 18, 2002, further revealed that the effluent was clear with a trace amount of foam in the receiving stream. Also, the media in the trickling filter was not growing bacteria. The lack of bacteria was noted after Hurricane Lili.
- G. An inspection conducted by the Department on or about October 29, 2003, revealed the following violations:
- 1) The Respondent failed to properly monitor the effluent flow from the facility. Specifically, the flow meter on the west side of the chlorine contact chamber was removed for repairs, and water was still being discharged through that side of the outfall. The Respondent's failure to properly measure its flow is in violation of LPDES permit LA0044661 (Part I, Page 2 and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A. The Respondent's failure to properly operate and maintain its equipment is in violation of LPDES permit LA0044661 (Part III, Sections A.2 and B.3), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.
 - 2) The Respondent failed to properly operate and maintain its equipment. Specifically, the rotating arm on the trickling filter was not operational and there was no bacterial growth present on the rock media in the trickling filter. The Respondent noted to the inspector that both of these operational issues were as a result of Hurricane Lili. Also, the digester was not operational at the time of the inspection. The Respondent's failure to properly operate and maintain its equipment is in violation of LPDES permit LA0044661 (Part III, Sections A.2 and B.3), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.

III

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of FIVE THOUSAND and NO/100 (\$5,000.00) DOLLARS, of which ONE THOUSAND SIX HUNDRED EIGHTY-EIGHT and NO/100 (\$1,688.00) DOLLARS represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement.

V

Respondent, in addition to paying the penalty amount specified in Paragraph IV above and as part of this Settlement, agrees to expend at least the amount of THIRTY-FIVE THOUSAND and NO/100 (\$35,000.00) DOLLARS to implement and/or perform the following beneficial environmental projects:

- A. The description of the Beneficial Environmental Project, the amount of money to be spent and the timeline for completing the project(s) are listed in Exhibit "A", attached hereto and made a part of this Settlement.
- B. Respondent shall submit monthly reports regarding its progress on the projects. The first shall be due on the 5th of the month following the date the Department signs this Settlement. Monthly reports shall be submitted on the

5th of every month thereafter until the project is completed. Each such monthly report shall include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each project through the date of the report. Upon completion of all projects required under this Settlement, Respondent shall submit a final report to include a summary of all the information previously submitted and a total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described.

- C. If Respondent does not spend the amount of \$35,000.00, then it shall, in its final report, propose additional projects for the Department's approval or pay to the Department an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent.
- D. The total amount of money expended by Respondent on cash payments to DEQ and on beneficial environmental projects, as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Orders and Notices of Potential Penalty, the Amended Consolidated Compliance Order and Notice of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against the City of Kaplan and

in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VII

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VIII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act and the rules relating to beneficial environmental projects set forth in LAC 33:I.Chapter 25.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Vermilion Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

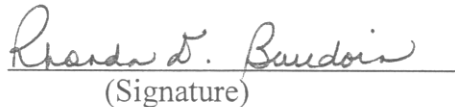
XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

WITNESSES:


(Signature)

Darlene J. LaBry
(Printed or Typed)


(Signature)

Rhonda D. Baudoin
(Printed or Typed)

CITY OF KAPLAN

BY: 
(Signature)

Levi J. Schexnider
(Printed or Typed)

TITLE: Mayor

THUS DONE AND SIGNED in duplicate original before me this 11 day

of MARCH, 2004, at KAPLAN, LA, VERMILION PARISH


NOTARY PUBLIC ID #

MARY V. MENARD
(Printed or Typed)

STATE OF LOUISIANA
Mike D. McDaniel, Secretary
Department of Environmental Quality

BY: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 12 day
of July, 2004, at Baton Rouge, Louisiana.

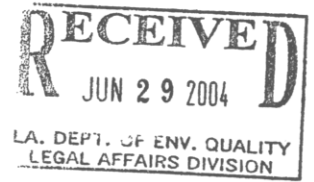
Mill #20951
NOTARY PUBLIC ID #
Terrell B. Bayler, Jr.
(Printed or Typed)

Approved: R. Bruce Hammatt
R. Bruce Hammatt, Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005



June 23, 2004

Mike D. McDaniel, Secretary
La. Department of Environmental Quality
Office of the Secretary
P.O. Box 4301
Baton Rouge, LA 70821-4301

Re: Review of DEQ Settlement;
City of Kaplan
WE-CN-03-0050, et al

Dear Secretary McDaniel:

Pursuant to the authority granted to me by R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,


NICHOLAS GACHASSIN
First Assistant Attorney General

NG/cbw

EXHIBIT "A"

CITY OF KAPLAN PROPOSED SEWER SYSTEM REHABILITATION PROJECT WEST OF TRAHAN AVENUE

The proposed sewer rehabilitation project shall occur in a target area of the City of Kaplan which is bound by the corporate limits of the City west of Trahan Street. An application was submitted to the Louisiana Rural Water Association (LRWA) on January 12, 2004 for smoke testing approximately 32,000 linear feet of sewer lines in the target area.

LRWA began smoke testing on February 9, 2004 and anticipates completion on or before March 1, 2004, dependent upon weather conditions.

Upon completion of the smoke testing, an assessment of the number and severity of the leaks detected will be made. Repair of these leaks shall then be prioritized. This assessment is anticipated to be complete on or about April 1, 2004. At such time, the City shall request quotations for the repair work, in accordance with the Louisiana Public Bid Law. The quotations shall be received on Monday, May 10th and awarded at the City's next regularly scheduled meeting on May 11th.

It is anticipated that the successful bidder will be issued a Notice to Proceed on or about June 1, 2004 with a completion date of December 31, 2004.

A determination of the exact number and type of repairs required can not be made until such time as the smoke testing is complete. Point repairs may be done on public and/or private property. Service line and main line replacement may also be required, as well as plugging and abandoning existing service lines. Manhole rehabilitation may also be included in the project.

The City shall expend a minimum of \$35,000 in construction costs for this sewer rehabilitation project. Below is a detailed breakdown of the construction estimate.

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENSION
1	Remove and Replace Asphalt Streets and Drives	sq yd	50	\$ 60.00	\$ 3,000.00
2	Remove and Replace Concrete Drives	sq yd	50	\$ 45.00	\$ 2,250.00
3	Remove and Replace Concrete Walks	sq yd	50	\$ 35.00	\$ 1,750.00
4	Special Backfil (A-4 Material)	cu yd	50	\$ 10.00	\$ 500.00
5	Limestone for Maintenance	ton	200	\$ 36.00	\$ 7,200.00
6	Sawed Joints	lin ft	60	\$ 3.50	\$ 210.00
7	Point Repair on Service Line (Public)	ea	5	\$ 150.00	\$ 5.00
8	Point Repair on Main Line	ea	5	\$ 205.00	\$ 1,025.00
9	Excavation and Backfill for Main Line Point Repair (0-5')	ea	3	\$ 270.00	\$ 810.00
10	Excavation and Backfill for Main Line Point Repair (5'-8')	ea	3	\$ 500.00	\$ 1,500.00
11	Excavation and Backfill for Main Line Point Repair (8'-11')	ea	2	\$ 900.00	\$ 1,800.00
12	Excavation and Backfill for Main Line Point Repair (11'-15')	ea	2	\$ 2,000.00	\$ 4,000.00
13	Excavation and Backfill for Service Line Point Repair (0-5')	ea	2	\$ 270.00	\$ 540.00

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENSION
14	Excavation and Backfill for Service Line Point Repair (5'-8')	ea	3	\$ 500.00	\$ 1,500.00
15	Additional Excavation for Point Repairs	lin ft	50	\$ 20.00	\$ 1,000.00
16	Plug and Abandon Service Line	ea	2	\$ 200.00	\$ 400.00
17	Rehabilitate Manhole	vert ft	5	\$ 100.00	\$ 500.00
18	Manhole Exfiltration Test	ea	1	\$ 100.00	\$ 100.00
19	Remove and Replace Service Lines (0-5')	lin ft	50	\$ 20.00	\$ 1,000.00
20	Remove and Replace Service Lines (5'-8')	lin ft	50	\$ 30.00	\$ 1,500.00
21	Remove and Replace Main Lines (0-5')	lin ft	50	\$ 25.00	\$ 1,250.00
22	Remove and Replace Main Lines (5-8')	lin ft	50	\$ 35.00	\$ 1,750.00
23	Remove and Replace Main Lines (8-11')	lin ft	50	\$ 45.00	\$ 2,250.00
24	Remove and Replace Main Lines (11-15')	lin ft	50	\$ 60.00	\$ 3,000.00
25	Cleaning & Video Inspection of Existing Sewer Lines	lin ft	800	\$ 3.00	\$ 2,400.00
26	Manhole Inserts (S.s. Type)	ea	5	\$ 150.00	\$ 750.00
27	Repair Invert	ea	1	\$ 100.00	\$ 100.00
28	Repair Bench	ea	1	\$ 150.00	\$ 150.00
29	Sealing at Joint of Manhole Walls and Cast Iron Frame	ea	1	\$ 100.00	\$ 100.00
30	Sealing Existing Cleanout Cover to Ring	ea	1	\$ 50.00	\$ 50.00
31	Root Cutting	lin ft	500	\$ 3.00	\$ 1,500.00
TOTAL CONSTRUCTION COST ESTIMATE					\$43,890.00